

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SF:TL-N-1841-01
KGCroke (LMSB)

date: September 12, 2001

to: Ron Cheung, Team Coordinator

from: CC:LM:CTM:SF

subject:

Statute Extensions for TEFRA Partnerships

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Analysis and Advise

A. Category A Partnerships: CC:PA:APJP has concluded because there are no eligible general partners to sign extensions of the statute of limitations for the taxable years at issue, each partnership entity should obtain a consent from the common parents (or their successors) of the 2 groups through which all partnership interests were held. The best practice would be to have the agent for the [REDACTED] (EIN: [REDACTED]) consolidated group for TYE [December 31, [REDACTED]] and [REDACTED] and the agent for the [REDACTED] (EIN: XX-XXXXXXX) consolidated group for TYE [REDACTED], [REDACTED] and [REDACTED] sign the Form 872-I.

I. [REDACTED] / Taxable Years ending
December 31, [REDACTED] and [REDACTED]. [REDACTED]
[REDACTED] was the common parent of its

consolidated group (the "[REDACTED]") for its taxable years ending December 31, [REDACTED] and [REDACTED]. As such, it has authority to act in its own name in all matters (except for certain exceptions not relevant in the instant case) relating to the tax liability for the consolidated return year. § 1.1502-77(a). If the common parent plans to cease its existence, it is to notify the Service and designate another member of its group to act in its place. § 1.1502-77(d). It is our understanding that as a result of the events described in (i) through (viii) below, [REDACTED] [REDACTED] ceased its existence without designating a new agent from its group. Furthermore, as a result of such events, all the other former members of the [REDACTED] have ceased to exist:

- (i) [REDACTED] (EIN: [REDACTED]) merged with and into [REDACTED] (EIN: [REDACTED]) on [REDACTED]. At such time, [REDACTED] was a member of the consolidated group.
- (ii) By [REDACTED], most (but not all) of the former members of the [REDACTED] consolidated group had liquidated into [REDACTED].
- (iii) [REDACTED], a U.K. corporation, acquired the [REDACTED] consolidated group on [REDACTED].
- (iv) [REDACTED] contributed the [REDACTED] consolidated group to [REDACTED] on [REDACTED]. At such time, the [REDACTED] consolidated group ceased to exist. Both [REDACTED] (the former common parent) and [REDACTED] (the successor in interest to [REDACTED]) continued their corporate existence.
- (v) On [REDACTED], two former members of the [REDACTED] consolidated group ([REDACTED] and [REDACTED]) merged into [REDACTED], a single member limited liability company, owned by [REDACTED]. [REDACTED] was (and is) disregarded as an entity separate from its owner for federal income tax purposes.
- (vi) Also on [REDACTED], [REDACTED] merged into [REDACTED], a single member limited liability owned by [REDACTED]. [REDACTED] was (and is) disregarded as an entity separate from its owner for federal income tax purposes.

(vii) On [REDACTED], the only three remaining former members of the [REDACTED] consolidated group merged into [REDACTED].

(viii) On [REDACTED], [REDACTED] changed its name to [REDACTED].

Based on the facts presented and the conclusions reached by APJP, we recommend that the Service obtain a consent from the alternative agents for the [REDACTED] for Tax years ending December 31, [REDACTED] and [REDACTED].¹ The Forms 872-I should be captioned and signed as follows:

(a) [REDACTED] (EIN: XX-XXXXXXX), formerly [REDACTED] (EIN: XX-XXXXXXX), as successor in interest to [REDACTED] (EIN: [REDACTED]), as successor in interest to [REDACTED] (EIN: [REDACTED]) *

* This is with respect to [REDACTED] several liability for the consolidated federal income tax of the [REDACTED] consolidated group for the group's taxable years ending December 31, [REDACTED] and [REDACTED].

The signature block on the Form 872-I should read as follows:

[Name of Officer]
[Title of Officer]
[REDACTED]

(b) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED], as alternative agent for the [REDACTED] (EIN: [REDACTED]) [REDACTED] consolidated group.*

* This is with respect to the consolidated federal income tax of the [REDACTED] consolidated group for the group's taxable years ending December 31, [REDACTED] and [REDACTED].

The signature block on the Form 872-I should read as follows:

[Name of Officer]

[REDACTED]

¹ In addition, we recommend that Forms 872 be executed by [REDACTED], as the successor to two former members of the [REDACTED] ([REDACTED] and [REDACTED]). These corporations were severally liable for the [REDACTED]'s consolidated federal income tax for the years ending December 31, [REDACTED] and [REDACTED].

[Title of Officer]
[REDACTED]

II. [REDACTED] / Taxable Years ending December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED]. [REDACTED] was the common parent of its consolidated group (the "[REDACTED]") for its taxable years ending December 31, [REDACTED], [REDACTED], and [REDACTED]. As such, it has authority to act in its own name in all matters (except for certain exceptions not relevant in the instant case) relating to the tax liability for the consolidated return year. § 1.1502-77(a). It is our understanding that the [REDACTED] ceased to exist upon its contribution to [REDACTED] on [REDACTED]. Further, we understand that [REDACTED] continues to exist, though under a new name, [REDACTED], and that [REDACTED] is now a member of the [REDACTED] consolidated group.

Since [REDACTED] continues in existence (under its new name, [REDACTED]), we recommend that the Service obtain a consent to be signed as follows:

- (a) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED], as alternative agent for the [REDACTED] (EIN: [REDACTED]) [REDACTED] consolidated group.*

* This is with respect to the consolidated federal income tax of the [REDACTED] consolidated group for the group's taxable years ending December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED].

The signature block on the Form 872-I should read as follows:

[Name of Officer]
[Title of Officer]
[REDACTED]

B. Category B Partnerships: CC:PA:APJP has concluded because there are no eligible general partners to sign extensions of the statute of limitations for the taxable years at issue, the best practice would be to have the common parent of the successor in interest to such partners sign individual consents.

[REDACTED], [REDACTED], & [REDACTED]. Each of these limited partnerships is out of existence. Additionally, the TMP and sole general partner of these partnerships, [REDACTED] ([REDACTED]), is also out of existence. During the years in issue, [REDACTED]'s general partner and TMP was [REDACTED]. [REDACTED]'s general partner and TMP was [REDACTED], a member of the the [REDACTED] consolidated group.

As discussed above, [REDACTED], as common

parent of the [REDACTED] group for the years at issue, has authority to act in its own name in all matters (except for certain exceptions not relevant in the instant case) relating to the tax liability for the consolidated return. § 1.1502-77(a).

A consent on Form 872-I should be obtained from [REDACTED] (now called [REDACTED]) as alternative agent for the [REDACTED] through which the partnership interests were held. The Form 872-I that we advised be executed by [REDACTED] (see language noted above in section II(a) for the Category A partnerships) will cover these partnerships for the interest(s) held through the [REDACTED].

C. Category C Partnership: CC:PA:APJP has concluded that extensions of the statute of limitations for the taxable years at issue be obtained from both [REDACTED], the TMP of [REDACTED] (formerly [REDACTED]), and [REDACTED], the common parent of the consolidated group.

We understand that APJP will provide the caption for the Form 872-P. We suggest that the Form 872-P be signed as follows:

- (a) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED] by [name of authorized representative, title], on behalf of [REDACTED] (EIN XX-XXXXXXX) in its capacity as Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX), on behalf of [REDACTED], in its capacity as Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX), formerly [REDACTED] (EIN XX-XXXXXXX).
- (b) [REDACTED] (EIN: XX-XXXXXXX), by [name of authorized representative, title], in its capacity as Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX), on behalf of [REDACTED], in its capacity as Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX), formerly [REDACTED] (EIN XX-XXXXXXX).

D. Category D Partnerships: CC:PA:APJP has concluded the following:

- (1) For the [REDACTED] year, the TEFRA procedures do not apply. Accordingly, each of the partnerships should obtain extensions of the statute of limitations from each partner; &
- (2) For the [REDACTED] and [REDACTED] years, the extensions should be obtained from both the TMP of each of the partnerships and the common parent of each of the consolidated groups.

We suggest that each Form 872 be signed as follows:

[REDACTED]:
(a) [REDACTED] & [REDACTED]: We understand that APJP will provide the caption for the Form 872-P. The Form 872-P should be signed by the common parent of the TMP and the TMP, [REDACTED], as follows:

- (1) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED] by [name of authorized representative, title], on behalf of [REDACTED] (EIN: XX-XXXXXXX), Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)
- (2) [REDACTED] (EIN: XX-XXXXXXX) by [name of authorized representative, title] Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)

(b) [REDACTED]: (The Form 872-I that we advised be executed by [REDACTED] (see language noted above in section II(a) for the Category A partnerships) will cover this partnership for the interest(s) held through the [REDACTED].)

[REDACTED]:
(a) [REDACTED] & [REDACTED]: We understand that APJP will provide the caption for the Form 872-P. The Form 872-P should be signed by the common parent of the TMP and the TMP, [REDACTED], as follows:

- (1) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED] by [name of authorized representative, title], on behalf of [REDACTED] (EIN: XX-XXXXXXX), Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)
- (2) [REDACTED] (EIN: XX-XXXXXXX) by [name of authorized representative, title], Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)

(b) [REDACTED]: (The Form 872-I that we advised be executed by [REDACTED] (see language noted above in section II(a) for the Category A partnerships) will cover this partnership for the interest(s) held through the [REDACTED].)

[REDACTED]:
(a) [REDACTED] & [REDACTED]: We understand that APJP will provide the caption for the Form 872-P. The Form 872-P should be signed by the common parent of the TMP and the TMP, [REDACTED], as follows:

- (1) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED] by [name of authorized representative, title], on behalf of [REDACTED]

(EIN: XX-XXXXXXX), Tax Matters Partner of [REDACTED]
[REDACTED] (EIN: XX-XXXXXXX)

- (2) [REDACTED] (EIN: XX-XXXXXXX) by [name of authorized representative, title], Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)

- (b) [REDACTED]: (The Form 872-I that we advised be executed by [REDACTED] (see language noted above in section II(a) for the Category A partnerships) will cover this partnership for the interest(s) held through the [REDACTED].)

E. Category E Partnerships: CC:PA:APJP has concluded that TMP and the common parent should sign the Form 872-P. We understand that APJP will provide the caption for the Form 872-P. The Form 872-P should be signed by the common parent of the TMP and the TMP, [REDACTED], as follows:

- (1) [REDACTED] (EIN: [REDACTED]), formerly [REDACTED] by [name of authorized representative, title], on behalf of [REDACTED] (EIN: XX-XXXXXXX), in its capacity as Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)
- (2) [REDACTED] (EIN: XX-XXXXXXX) by [name of authorized representative, title], Tax Matters Partner of [REDACTED] (EIN: XX-XXXXXXX)

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SF:TL-N-1841-01

KGCroke (LMSB)

date: August 17, 2001

to: Ron Cheung, Team Coordinator

from: CC:LM:CTM:SF

subject: [REDACTED]
Statute Extensions for TEFRA Partnerships

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Issue

Extensions of the statute of limitations on assessment need to be executed for [REDACTED] TEFRA partnerships for the taxable years [REDACTED], [REDACTED], and [REDACTED]. Who are the proper parties to extend the statute of limitations?

Facts

Background.

During the years [REDACTED] through [REDACTED], the [REDACTED] operations of [REDACTED] ([REDACTED]) were organized in partnerships. [REDACTED], a U.K. corporation, (" [REDACTED] "), acquired [REDACTED] on [REDACTED]. The acquisition was accomplished when [REDACTED] formed [REDACTED] (" [REDACTED] ") and [REDACTED] merged into [REDACTED] on [REDACTED] with [REDACTED] surviving and [REDACTED] going out of existence. [REDACTED] formed [REDACTED], a partnership but treated as a corporation under the check the box regulations, on [REDACTED]. On that date [REDACTED] transferred its shares of [REDACTED] to that entity. [REDACTED]'s name was changed to [REDACTED] (the name has no comma after [REDACTED]) on [REDACTED]. [REDACTED] is now the common parent for the consolidated group, which includes [REDACTED].

In [REDACTED], [REDACTED] and [REDACTED], formerly [REDACTED], entered into a joint venture which became [REDACTED] (dba [REDACTED]). [REDACTED] is owned % by [REDACTED] and % by [REDACTED]. [REDACTED] is the TMP of [REDACTED].

The Partnerships.

Exam is auditing [REDACTED] TEFRA partnerships that were owned in whole or in part by [REDACTED]. Attachment A to this memorandum is a schedule of the partnerships. [REDACTED] and Exam want to extend the I.R.C. § 6229 period of limitations on assessment for tax years [REDACTED], [REDACTED], and [REDACTED].

The status of the [REDACTED] partnerships can be categorized as follows:

Category A:

[REDACTED], [REDACTED], [REDACTED], and [REDACTED].

These [REDACTED] partnerships have been terminated, their TMPs have been terminated, and their general partners have been terminated. They have no limited partners.

The interests of [REDACTED] of the [REDACTED] partnerships were entirely owned either directly or indirectly by [REDACTED], the [REDACTED] partnership. [REDACTED] had [REDACTED] partners in [REDACTED] and [REDACTED] in [REDACTED] and [REDACTED]. For taxable year [REDACTED], [REDACTED] of [REDACTED]'s

partners were corporations owned by [REDACTED] (" [REDACTED] "). The other [REDACTED] were entities owned by [REDACTED]. [REDACTED] held the largest interest ([REDACTED] %) in all years.

[REDACTED] acquired [REDACTED] in [REDACTED]. It was merged into [REDACTED] and went out of existence. For taxable years [REDACTED] and [REDACTED], the [REDACTED] partners were [REDACTED], [REDACTED], and [REDACTED], of which, after the acquisition of [REDACTED], were all owned by [REDACTED] and were members of the [REDACTED] consolidated group.

On [REDACTED], [REDACTED] and [REDACTED], were merged into [REDACTED], a single member Delaware limited liability company and disregarded entity for federal tax purposes, and went out of existence. On the same date, [REDACTED] was merged into [REDACTED], another disregarded entity, and went out of existence. [REDACTED] was the sole member of both LLCs until it contributed them to the [REDACTED] on [REDACTED]. Thereafter, [REDACTED] was the sole member. Both [REDACTED] and [REDACTED] are Delaware limited liability companies.

[REDACTED] was a wholly owned subsidiary of [REDACTED]. [REDACTED] was a wholly owned subsidiary of [REDACTED]. [REDACTED] was also merged into [REDACTED] on [REDACTED] and, it too, went out of existence.

Category B: [REDACTED], [REDACTED], and [REDACTED].

These [REDACTED] limited partnerships have been terminated. [REDACTED], formerly [REDACTED], the TMP and sole general partner of these partnerships has also been terminated. The [REDACTED] partnerships had [REDACTED] as a limited partner. The status of [REDACTED] is unknown.

[REDACTED]'s general partners were [REDACTED] and [REDACTED] and each held in the aggregate a [REDACTED] % interest. The status of [REDACTED], a [REDACTED] entity, is unknown. [REDACTED] still exists. [REDACTED] general partners were [REDACTED] and [REDACTED] and each held in the aggregate a [REDACTED] % interest. [REDACTED] was acquired by [REDACTED] on [REDACTED] in a tax free

reorganization under I.R.C. § 368(a)(2)(e). It was merged into [REDACTED] and went out of existence.

Category C: [REDACTED], formerly [REDACTED], (" [REDACTED] ").

[REDACTED] has been terminated but its TMP, [REDACTED], still exists. [REDACTED] is the TMP for [REDACTED] and it still exists. [REDACTED] was a member of the [REDACTED] consolidated group during the audit years.

Category D: [REDACTED] and [REDACTED].

These partnerships still exist and their TMPs still exist. [REDACTED] is the TMP for [REDACTED]. [REDACTED], a corporation, is the TMP for [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] were members of the [REDACTED] consolidated group during the audit years. The stock of [REDACTED] was contributed to [REDACTED] in [REDACTED].

Category E: [REDACTED]

[REDACTED] had [REDACTED] general partners; [REDACTED], a [REDACTED] % interest, and [REDACTED], a [REDACTED] % interest. [REDACTED] entities were members of the [REDACTED] consolidated group during the audit years. [REDACTED] was merged into [REDACTED] on the same day the partnership was terminated and went out of existence. [REDACTED] still exists.

Law

Generally, there is a three year statute of limitations for assessment of taxes attributable to partnership or affected items. I.R.C. § 6229(a). This limitations period can be extended with respect to any partner, by an agreement between the Secretary and such partner, and with respect to all partners, by an agreement between the Secretary and (i) the tax matters partner ("TMP") or (ii) any other person authorized by the partnership in writing to enter into such an agreement. I.R.C. § 6229(b)(1).

The tax matters partner of any partnership is--

(A) the general partner designated as the tax matters partner as provided in regulations, or

(B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).

If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Secretary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.

I.R.C. § 6231(a)(7).

The common parent is the sole agent for each member of the consolidated group and is the agent for the purpose of executing extensions of the statute of limitations on assessment. Treas. Reg. § 1.1502-77(c)(2).

Treas. Reg. § 301.6231(a)(7)-1.

A partnership may designate a partner as its TMP for a specific taxable year only as provided in Treas. Reg. § 301.6231(a)(7)-1. If a partnership does not designate a general partner as the TMP for a specific taxable year, or if the designation is terminated without the partnership designating another general partner as TMP, the TMP is the partner determined under Treas. Reg. § 301.6231(a)(7)-1.

The partnership may make a subsequent designation of a TMP for a partnership taxable year at any time after the filing of the partnership return for that taxable year. Treas. Reg. § 301.6231(a)(7)-1(e). A person may be designated as the TMP of a partnership for a taxable year only if that person- (i) Was a general partner in the partnership at some time during the taxable year for which the designation is made; or (ii) Is a general partner in the partnership as of the time the designation is made. Treas. Reg. § 301.6231(a)(7)-1(b).

The subsequent designation is made by filing a written statement with the service center identifying the partnership, the TMP, and specifying the taxable year to which the designation relates. The statement must be signed by persons who were general partners at the close of the taxable year and were shown on the return for that year to hold more than 50% of the

aggregate interest in partnership profits. Treas. Reg. § 301.6231(a)(7)-1(e). If each partner who was a general partner at the close of the taxable year has been liquidated or dissolved or is no longer in the partnership, the statement must be signed by persons who were partners at the close of the taxable year and were shown on the return for that year to hold more than 50% of the aggregate interest in partnership profits. Treas. Reg. § 301.6231(a)(7)-1(f).

If the designation of a TMP has been terminated and the partnership has not made a subsequent designation, the general partner having the largest profits interest at the close of that taxable year is the TMP ("the largest-profits-interest rule"). Treas. Reg. § 301.6231(a)(7)-1(m). If the partnership has not designated a TMP for the taxable year and it is impracticable to apply the largest-profits-interest rule, the Commissioner will select a TMP. Treas. Reg. § 301.6231(a)(7)-1(n). It is impracticable to apply the largest-profits-interest rule if, inter alia, each general partner is deemed to have no profits interest in the partnership because it has been liquidated. Treas. Reg. § 301.6231(a)(7)-1(o)(2). The Commissioner will select as the TMP any person who was a general partner at any time during the taxable year under examination. Treas. Reg. § 301.6231(a)(7)-1(p)(1). If all the general partners have been liquidated, the Commissioner will select a limited partner in accordance with the criteria set forth in Treas. Reg. § 301.6231(a)(7)-1(q)(2).

A designation of an entity as a tax matters partner for a taxable year remains in effect until the liquidation or dissolution of the entity, a revocation of the designation, or a subsequent designation. Treas. Reg. § 301.6231(a)(7)-1(l).

Changes to Small Partnership Exception by TRA 1997.

As part of the Taxpayer Relief Act of 1997, certain changes were made to the TEFRA partnership provisions, including the expansion of the small partnership exception. A small partnership is not a "partnership" for purposes of the TEFRA procedures (i.e., the TEFRA procedures do not apply) unless an election is made under I.R.C. § 6231(a)(1)(B)(ii). Prior to the change, C corporations could not be partners in a "small partnership." TRA 1997 changed that rule effective for tax years ending after August 5, 1997. A partnership meeting the requisites of a small partnership must make an election to have the TEFRA procedures apply.

Winding Up of Limited Partnerships.

Delaware law provides:

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in § 17-203 of this title, the persons winding up the limited partnership's affairs may, in the name of, and for and on behalf of, the limited partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge or make reasonable provision for the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on a liquidating trustee.

6 Del. C. § 17-803(b) (2000)

Analysis and Advice

The statute of limitations on assessment of tax attributable to a partnership item can be extended by each partner or, for a TEFRA partnership, by the TMP for all partners. I.R.C. § 6229(b). The changes to the small partnership exception caused some of the partnerships at issue to become non-TEFRA partnerships for the [REDACTED] taxable year. The partnerships that were not TEFRA partnerships for the [REDACTED] taxable year are:

[REDACTED], [REDACTED], [REDACTED], and [REDACTED]. For these partnerships the statute extensions must be executed by each partner in the partnership for the [REDACTED] taxable year.

Category A: The following advice pertains to [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. All these partnerships and their TMPs have been terminated. Their general partners have also been terminated.

I.R.C. § 6231(a)(2)(B) defines a partner as "a partner in the partnership" and "any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership."

During the audit years, [REDACTED] was, either directly or indirectly, the majority partner of each of

the [REDACTED] partnerships. [REDACTED] and its parent, [REDACTED], were members of a consolidated group, the common parent of which was [REDACTED]. Pursuant to Treas. Reg. § 1.1502-6(a), the common parent and each subsidiary that was a member of a consolidated group during any part of the consolidated return year is severally liable for the tax for that year. Thus, by virtue of being a member of a consolidated group, the tax liability of [REDACTED] was determined in part by taking into account indirectly partnership items of [REDACTED]. Therefore, [REDACTED] is treated as a partner of the [REDACTED] partnerships for purposes of the TEFRA partnership provisions.

Treas. Reg. § 301.6231(a)(7)-1(f) provides that where all the general partners have been liquidated or dissolved, a TMP may be designated by partners with the majority interest. All the general partners of the [REDACTED] partnerships have been liquidated or dissolved. In this case, [REDACTED], which is now called [REDACTED], qualifies as the partner with the majority interest. Consequently, it can designate itself as TMP for [REDACTED] and [REDACTED] for each of the [REDACTED] partnerships.

The designation should be made in accordance with Treas. Reg. § 301.6231(a)(7)-1(f)(2) which provides that the TMP may be designated by filing a written statement with the service center with which the partnership return was filed. The statement shall--

(i) Identify the partnership and the designated tax matters partner by name, address, and taxpayer identification number;

(ii) Specify the partnership taxable year to which the designation relates;

(iii) Declare that it is a designation of a tax matters partner for the partnership taxable year specified; and

(iv) Be signed by persons who were partners at the close of such taxable year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all partners as of the close of such taxable year.

With respect to requirement (iv), [REDACTED] owned more than 50 percent of the aggregate interest in partnership profits because, in addition to [REDACTED], it also indirectly owned several other partners.

Once the designations have been made, the Form 872-P for each of the partnerships should indicate the Tax Matters Partner as follows:

_____, formerly _____, in its capacity as Tax Matters Partner of (insert name of partnership).

The signature line should be set up with the name of a current officer of _____, the officer's title, and the name _____

Partnerships _____ were all terminated on _____. _____, however, was not terminated until _____. _____ had _____ partners, all C corporations, in its _____ taxable year. It, therefore, fell within the "small partnership" exception. _____ did not make an election to have the TEFRA procedures apply. Consequently, the TEFRA procedures do not apply to _____ for its _____ taxable year.

Accordingly, the statute of limitations on assessment of the partnership items can only be extended by the _____ partners of _____. Because all _____ partners were members of the _____ consolidated group, _____, as common parent, is the sole agent for the _____ partners during the audit years and is the party to execute the statute extension. Treas. Reg. § 1.1502-77(a). A Form 872-I or a Form 872 with the following language should be used.

With regard to interests held in entities that are subject to the TEFRA unified audit and litigation procedures, and without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items, affected items, computational adjustments, and partnership items converted to nonpartnership items. This agreement also extends the period for filing a request for administrative adjustment. For partnership items that have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership.

The Form 872 should cover taxable years [REDACTED], [REDACTED], as well as [REDACTED]. The [REDACTED] and [REDACTED] years are included as a precautionary measure should there be a problem with the TMP designations for those years.

The caption of the Form 872 for [REDACTED], [REDACTED], and [REDACTED] should read:

[REDACTED] (EIN [REDACTED]), formerly
[REDACTED] (EIN [REDACTED]) [REDACTED]
[REDACTED] consolidated group.

The signature line should be set up with the name of a current officer of [REDACTED], the officer's title, and the name [REDACTED].

Category B: The following advice pertains to [REDACTED], [REDACTED], and [REDACTED]. All these partnerships were terminated in [REDACTED]. Their TMP and sole general partner, [REDACTED], was also terminated in [REDACTED].

If the [REDACTED] partnerships are in the winding up process, the persons winding up the partnerships' affairs may under Delaware law (6 Del. C. @ 17-803(b) (2000)) authorize a person in writing to enter into statute extensions pursuant to I.R.C. § 6229(b)(1)(B).

If that cannot be done, the partnerships may designate a TMP under Treas. Reg. § 301.6231(a)(7)-1(f), the method for making the designations is set forth above in the discussion of the Category A partnerships. That regulation is applicable here because the sole general partner has been terminated.

The designation must be made by partners who, in the aggregate, held more than 50 percent of the partnership profits interest. Thus, the designation must be signed by [REDACTED] and by either [REDACTED] or [REDACTED] to meet the more-than-50 percent requirement. [REDACTED], the sole general partner, of all three partnerships was owned [REDACTED] % by [REDACTED], a [REDACTED] (now [REDACTED]) entity, and [REDACTED] % by [REDACTED]. [REDACTED] was owned [REDACTED] % by [REDACTED] and [REDACTED] % by [REDACTED]. The [REDACTED] partnerships were thus indirectly owned [REDACTED] % by [REDACTED], [REDACTED] % by [REDACTED], and [REDACTED] % by [REDACTED]. With respect to [REDACTED], this assumes that the flow-thru items from the three partnerships to [REDACTED] were reflected on the [REDACTED] consolidated return. If this is not the case, please contact us for further advice.

If no designation is made then the statute extensions must be signed by every partner in the [REDACTED] partnerships. The Form 872-I that we advised be executed by [REDACTED] for the Category A partnerships for [REDACTED], [REDACTED], and [REDACTED], will cover the partnership items flowing from the partnerships to [REDACTED] for the years under audit. Thus, the only other extensions that need to be obtained are for [REDACTED], [REDACTED], and [REDACTED].

Category C: The following advice pertains to [REDACTED]. [REDACTED]'s TMP, [REDACTED], still exists and should execute the Form 872-P for [REDACTED], [REDACTED], and [REDACTED]. The Form 872-P should indicate the Tax Matters Partner as follows:

[REDACTED], formerly [REDACTED], on behalf of [REDACTED] in its capacity as Tax Matters Partner of [REDACTED] Limited Partnership, and on behalf of [REDACTED] in its capacity as Tax Matters Partner of [REDACTED], formerly [REDACTED].

The signature line should be set up with the name of a current officer of [REDACTED], the officer's title, and the name [REDACTED].

Category D: The following advice pertains to [REDACTED], [REDACTED], and [REDACTED]. All [REDACTED] partnerships still exist and their TMPs still exist.

For taxable years [REDACTED] and [REDACTED], the TEFRA procedures apply to these partnerships. For taxable year [REDACTED], these partnerships met the small partnership exception of I.R.C. § 6231(a)(1)(B)(ii). They did not make an election to have the TEFRA procedures apply. Consequently, for taxable year [REDACTED], the statute of limitations on assessment of partnership items must be extended by each of the partners in these partnerships.

The stock of [REDACTED], the TMP of [REDACTED] and [REDACTED], was contributed to the [REDACTED]. The change in ownership of the corporate TMP does not terminate the TMP. Treas. Reg. § 301.6231(a)(7)-1(1). Accordingly, the TMPs can execute the statute extension on behalf of the [REDACTED] partnerships. The old common parent of [REDACTED] is still its agent for executing the Form 872-P.

The Forms 872-P for the three partnerships for [REDACTED] and [REDACTED] should indicate their respective Tax Matters Partner as follows:

[REDACTED], formerly [REDACTED], on behalf of [REDACTED], in its capacity as Tax Matters Partner of [REDACTED]

[REDACTED], formerly [REDACTED], on behalf of [REDACTED], in its capacity as Tax Matters Partner of [REDACTED]

[REDACTED], formerly [REDACTED], on behalf of [REDACTED], in its capacity as Tax Matters Partner of [REDACTED]

The signature line for each Form 872-P should be set up with the name of a current officer of [REDACTED], the officer's title, and the name [REDACTED].

For the [REDACTED] taxable year, statute extensions must be executed by each partner in the [REDACTED] partnerships. The Form 872-I that we advised be executed by [REDACTED] for the Category A partnerships will cover the partnership items flowing from the [REDACTED] partnerships to [REDACTED] and [REDACTED] and any limited partner whose partnership items were directly or indirectly reported on the [REDACTED] consolidated return. Statute extensions must be obtained from all the other partners.

Category E: The following advice pertains to [REDACTED], which was terminated on [REDACTED].

[REDACTED] had [REDACTED] general partners; [REDACTED], a [REDACTED]% interest, and [REDACTED], a [REDACTED]% interest. Both entities were members of the [REDACTED] consolidated group. [REDACTED] was merged into [REDACTED] on the same day the partnership was terminated and went out of existence. As common parent of [REDACTED] and [REDACTED], [REDACTED] is treated as a partner of [REDACTED] for purposes of the TEFRA partnership provisions. It is also the partner with the largest interest and can thus designate the TMP. Accordingly, we recommend that it designate itself as TMP.

Once the designation has been made, the Form 872-P should indicate the Tax Matters Partner as follows:

[REDACTED] (EIN [REDACTED]), formerly
[REDACTED] in its
capacity as Tax Matters Partner of [REDACTED].

The signature line should be set up with the name of a
current officer of [REDACTED], the officer's
title, and the name [REDACTED].

The Form 872-I that we advised be executed for the Category
A partnerships will also cover this partnership should there be a
problem with the TMP designation.

If you have any questions or comments, please call the
undersigned.

THOMAS G. SCHLEIER
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
KEVIN G. CROKE
Attorney

Attachment